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Attorneys for Defendants

COUNTY OF ALAMEDA, MELISSA WILK, EVA HE

and MARIA LAURA BRIONES

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

LISAMARIA MARTINEZ,

Plaintiff,

v.

COUNTY OF ALAMEDA, MELISSA WILK,  
in her individual capacity, EVA HE, in her  
individual capacity, MARIA LAURA  
BRIONES, in her individual capacity,

Defendants.

Case No. 20-cv-06570-TSH

**DEFENDANTS COUNTY OF  
ALAMEDA, MELISSA WILK, EVA HE  
AND MARIA LAURA BRIONES'  
ANSWER TO PLAINTIFF LISAMARIA  
MARTINEZ'S AMENDED  
COMPLAINT; DEMAND FOR JURY  
TRIAL**

COMES NOW Defendants COUNTY OF ALAMEDA, MELISSA WILK, EVA HE and MARIA LAURA BRIONES (“Defendants”) and in answering the Amended Complaint (“Complaint”) by Plaintiff LISAMARIA MARTINEZ, for themselves and for no other parties, admit, deny, and allege as follows:

### INTRODUCTION

1. Defendants lack information and belief sufficient to either admit or deny the allegations. Except as heretofore expressly admitted or otherwise denied, Defendants deny generally and specifically each and every allegation contained therein.

2. This paragraph asserts no material allegations against Defendants and no response is required. To the extent that a response could be required, Defendants lack sufficient information and belief upon which to answer, and on that basis deny the allegations therein.

### PARTIES

3. Defendants lack information and belief sufficient to either admit or deny the allegations. Except as heretofore expressly admitted or otherwise denied, Defendants deny generally and specifically each and every allegation contained therein.

4. Defendants admit that Alameda County is a municipality and has offices at 1221 Oak Street in Oakland, California. Except as heretofore expressly admitted or otherwise denied, Defendants deny generally and specifically each and every allegation contained therein.

5. Defendants admit that Melissa Wilk is the Alameda County Auditor-Controller/Clerk-Recorder and is sued in her individual capacity. Except as heretofore expressly admitted or otherwise denied, Defendants deny generally and specifically each and every allegation contained therein.

6. Defendants admit that Eva He is the Assistant Clerk-Recorder for Alameda County and is sued in her individual capacity. Except as heretofore expressly admitted or otherwise denied, Defendants deny generally and specifically each and every allegation contained therein.

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2 allegations. Except as heretofore expressly admitted or otherwise denied, Defendants deny  
3 generally and specifically each and every allegation contained therein.

4           16. Defendants lack information and belief sufficient to either admit or deny the  
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13           19. Defendants lack information and belief sufficient to either admit or deny the  
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19           21. Defendants lack information and belief sufficient to either admit or deny the  
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25           23. Defendants lack information and belief sufficient to either admit or deny the  
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**FIRST CAUSE OF ACTION****Title II of the ADA (42 U.S.C. § 12132) (Defendant Alameda County)**

33. Defendants reincorporate by reference each and every admission, denial based upon information and belief and denials set forth in response to paragraphs 1 through 32.

34. Defendants state that the law speaks for itself. Except as heretofore expressly admitted or otherwise denied, Defendants deny generally and specifically each and every allegation contained therein.

35. Defendants state that the law speaks for itself. Except as heretofore expressly admitted or otherwise denied, Defendants deny generally and specifically each and every allegation contained therein.

36. Defendants admit that the County is a public entity and subject to Title II of the ADA. As to all other allegations therein, Defendants lack information and belief sufficient to either admit or deny the allegations. Except as heretofore expressly admitted or otherwise denied, Defendants deny generally and specifically each and every allegation therein.

37. Defendants admit that the County is a public entity and subject to Title II of the ADA. As to all other allegations therein, Defendants lack information and belief sufficient to either admit or deny the allegations. Except as heretofore expressly admitted or otherwise denied, Defendants deny generally and specifically each and every allegation therein.

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68. Defendants lack information and belief sufficient to either admit or deny the allegations. Except as heretofore expressly admitted or otherwise denied, Defendants deny generally and specifically each and every allegation therein.

69. Defendants state that the law speaks for itself. Except as heretofore expressly admitted or otherwise denied, Defendants deny generally and specifically each and every allegation contained therein.

## SECOND CAUSE OF ACTION

### Title V of the ADA (42 U.S.C. § 12203(b) (Individual Defendants))

70. Defendants reincorporate by reference each and every admission, denial based upon information and belief and denials set forth in response to paragraphs 1 through 69.

71. Defendants admit that the law speaks for itself. Except as heretofore expressly admitted or otherwise denied, Defendants deny generally and specifically each and every allegation contained therein.

72. Defendants deny generally and specifically each and every allegation contained therein.

73. Defendants lack information and belief sufficient to either admit or deny the allegations. Except as heretofore expressly admitted or otherwise denied, Defendants deny generally and specifically each and every allegation therein.

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5 allegations. Except as heretofore expressly admitted or otherwise denied, Defendants deny  
6 generally and specifically each and every allegation therein.

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8 allegations. Except as heretofore expressly admitted or otherwise denied, Defendants deny  
9 generally and specifically each and every allegation therein.

10           80. Defendants lack information and belief sufficient to either admit or deny the  
11 allegations. Except as heretofore expressly admitted or otherwise denied, Defendants deny  
12 generally and specifically each and every allegation therein.

13           81. Defendants lack information and belief sufficient to either admit or deny the  
14 allegations. Except as heretofore expressly admitted or otherwise denied, Defendants deny  
15 generally and specifically each and every allegation therein.

16           82. Defendants state that the law speaks for itself. Except as heretofore expressly  
17 admitted or otherwise denied, Defendants deny generally and specifically each and every  
18 allegation contained therein.

### 19   **THIRD CAUSE OF ACTION**

#### 20   **California Civil Code § 11135 (Defendant County of Alameda)**

21           83. Defendants reincorporate by reference each and every admission, denial based  
22 upon information and belief and denials set forth in response to paragraphs 1 through 82.

23           84. Defendants admit that the law speaks for itself. Except as heretofore expressly  
24 admitted or otherwise denied, Defendants deny generally and specifically each and every  
25 allegation contained therein.

26           85. Defendants admit that the law speaks for itself. Except as heretofore expressly  
27 admitted or otherwise denied, Defendants deny generally and specifically each and every  
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86. Defendants admit that the law speaks for itself. Except as heretofore expressly admitted or otherwise denied, Defendants deny generally and specifically each and every allegation contained therein.

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89. Defendants deny generally and specifically each and every allegation contained therein.

90. Defendants deny generally and specifically each and every allegation contained therein.

91. Defendants lack information and belief sufficient to either admit or deny the allegations. Except as heretofore expressly admitted or otherwise denied, Defendants deny generally and specifically each and every allegation therein.

92. Defendants deny generally and specifically each and every allegation contained therein.

#### **FOURTH CAUSE OF ACTION**

##### **Disabled Persons Act (Cal. Civ. Code §§ 54-55.3) (All Defendants)**

93. Defendants reincorporate by reference each and every admission, denial based upon information and belief and denials set forth in response to paragraphs 1 through 92.

94. Defendants lack information and belief sufficient to either admit or deny the allegations. Except as heretofore expressly admitted or otherwise denied, Defendants deny generally and specifically each and every allegation therein.

95. Defendants lack information and belief sufficient to either admit or deny the allegations. Except as heretofore expressly admitted or otherwise denied, Defendants deny generally and specifically each and every allegation therein.

96. Defendants deny generally and specifically each and every allegation therein.

97. Defendants lack information and belief sufficient to either admit or deny the allegations. Except as heretofore expressly admitted or otherwise denied, Defendants deny generally and specifically each and every allegation therein.

## **FIFTH CAUSE OF ACTION**

### **Declaratory Relief (All Defendants)**

98. Defendants reincorporate by reference each and every admission, denial based upon information and belief and denials set forth in response to paragraphs 1 through 97.

99. Defendants lack information and belief sufficient to either admit or deny the allegations. Except as heretofore expressly admitted or otherwise denied, Defendants deny generally and specifically each and every allegation therein.

100. Defendants lack information and belief sufficient to either admit or deny the allegations. Except as heretofore expressly admitted or otherwise denied, Defendants deny generally and specifically each and every allegation therein.

101. Defendants lack information and belief sufficient to either admit or deny the allegations. Except as heretofore expressly admitted or otherwise denied, Defendants deny generally and specifically each and every allegation therein.

### **(PLAINTIFF'S) RELIEF REQUESTED**

In answering Plaintiff's Relief Requested, Defendants deny Plaintiff is entitled to any relief, an injunction, damages, costs or attorneys' fees in any sum or sums or at all.

### **AFFIRMATIVE DEFENSES**

Without admitting any of the allegations in the Complaint, Defendants allege each of the following as separate affirmative defenses, expressly reserving all of their rights to allege additional defenses, and/or to seek leave of Court to amend to allege additional defenses, when and if facts supporting such defenses become known to them.

### **FIRST AFFIRMATIVE DEFENSE**

The Complaint for damages fails to state a claim upon which relief may be granted.

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1 **SECOND AFFIRMATIVE DEFENSE**

2 The Complaint, and each purported cause of action alleged in the Complaint, is barred in  
3 whole or in part because Defendants' programs, activities and services at issue in this action,  
4 *when viewed in their entirety*, are accessible to persons with disabilities.

5 **THIRD AFFIRMATIVE DEFENSE**

6 The Complaint, and each purported cause of action alleged in the Complaint, is barred in  
7 whole or in part because Defendants, and each of them, have provided reasonable access to their  
8 programs, activities and services.

9 **FOURTH AFFIRMATIVE DEFENSE**

10 The Complaint, and each purported cause of action alleged in the Complaint, is barred in  
11 whole or in part on the ground and to the extent that Plaintiff's requested modifications of  
12 policies, practices and/or procedures are unreasonable and/or unnecessary to avoid  
13 discrimination on the basis of disability.

14 **FIFTH AFFIRMATIVE DEFENSE**

15 The Complaint, and each purported cause of action alleged in the Complaint, is barred in  
16 whole or in part because Defendants, and each of them, have completely or substantially  
17 complied with all applicable requirements.

18 **SIXTH AFFIRMATIVE DEFENSE**

19 The Complaint, and each purported cause of action alleged in the Complaint, is barred in  
20 whole or in part on the ground and to the extent that the relief sought by Plaintiff would result in  
21 an undue financial or administrative burden and require unreasonable modifications to  
22 Defendants' programs, activities and services.

23 **SEVENTH AFFIRMATIVE DEFENSE**

24 Plaintiff is not entitled to recover the damages sought in the Complaint because her use  
25 and enjoyment of the programs, facilities and services at issue were not denied or interfered with  
26 by Defendants or by any other party.

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**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's causes of action are barred on the ground and to the extent that Defendants have not violated any applicable federal, state or local disability access laws.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiff is not entitled to bring and/or recover on her Complaint because she has failed to comply with claim presentation requirements and limitations periods under the Government Claims Act including sections 901 and 911.2, 911.4-912.2, 945.4 and 946.6 of the California Government Code.

**TENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims, including without limitation, her prayer for injunctive relief, is moot and/or will be by the time this matter is adjudicated.

**ELEVENTH AFFIRMATIVE DEFENSE**

The Complaint, and each purported cause of action alleged in the Complaint, is barred to the extent that it relies on events that occurred before the period captured by the running of the applicable statute of limitations.

**TWELFTH AFFIRMATIVE DEFENSE**

The Complaint is barred to the extent the alleged violations of law are excused or justified under the statutes under which Plaintiff has sued.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Plaintiff is not entitled to recover attorneys' fees from Defendants as alleged in the Complaint. In the alternative, to the extent that Plaintiff is entitled to recover attorneys' fees or costs, such fees and costs are barred on the ground and to the extent that they were not reasonably incurred or were incurred at an excessive rate.

**FOURTEENTH AFFIRMATIVE DEFENSE**

The Complaint, and each purported cause of action alleged in the Complaint, is barred because granting the relief sought by Plaintiff would constitute or result in a fundamental alteration in the nature of the programs, activities or services offered by Defendants.

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**FIFTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's prayers for damages under the California Civil Code are barred because Defendants are not a "person, firm or corporation" within the meaning of those statutes.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Defendants are immune from liability to Plaintiff's claims in this action to the full extent mandated by section 815 of the California Government Code.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Defendants are immune from liability to Plaintiff's claims in this action to the full extent mandated by section 815.2 of the California Government Code.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

Defendants are immune from liability to Plaintiff's claims in this action to the full extent mandated by section 815.6 of the California Government Code.

**NINETEENTH AFFIRMATIVE DEFENSE**

The Complaint, and each purported cause of action alleged in the Complaint, is barred on the ground and to the extent that it seeks to impose liability or secure relief for an injury caused by Defendants' adopting or failing to adopt an enactment or by failing to enforce any law in violation of section 818.2 of the California Government Code.

**TWENTIETH AFFIRMATIVE DEFENSE**

All actions Defendants, or their employees, agents or representatives were undertaken and were in good faith and with the reasonable belief that said actions were valid, necessary and constitutionally proper.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

Defendants' acts were privileged under applicable statutes and case law.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

Plaintiff's claims under state law are precluded as she failed to timely present the required claim(s).

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**TWENTY-THIRD AFFIRMATIVE DEFENSE**

Plaintiff's prayer for monetary damages is precluded as the allegations against Defendants do not constitute deliberate indifference or intentional discrimination.

**DEMAND FOR JURY TRIAL**

Defendants demand a trial by jury in this matter.

WHEREFORE, Defendants pray that:

1. Defendants be dismissed;
2. Plaintiff take nothing by this proceeding;
3. Defendants recover their reasonable attorneys' fees and costs; and
4. The Court awards such other relief as it considers proper.

Dated: July 24, 2023

Respectfully submitted,

**ORBACH HUFF + HENDERSON LLP**

By: /s/ Nicholas D. Fine

Kevin E. Gilbert

Nicholas D. Fine

Attorneys for Defendants

COUNTY OF ALAMEDA, MELISSA WILK,  
EVA HE and MARIA LAURA BRIONES

ORBACH HUFF + HENDERSON LLP